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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DERRICK WADE, Plaintiff and Respondent, v. DAVID MANN et al., Defendants and Appellants.	B234497 (Los Angeles County Super. Ct. No. BC402875)

APPEAL from an order of the Superior Court of Los Angeles County, Michael Johnson, Judge. Affirmed.

Ivie, McNeill & Wyatt and Rickey Ivie for Defendants and Appellants.

Joseph D. Schleimer for Plaintiff and Respondent.

Defendants and appellants David Mann and Tamela Mann (collectively, Mann or the Manns) appeal an order granting the motion of plaintiff and respondent Derrick Wade (Wade) to disqualify Mann's counsel.[1]

We review the trial court's ruling under the deferential abuse of discretion standard. On the record presented, we perceived no abuse and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

On November 26, 2008, Wade filed suit against the Manns, seeking to recover for artist management services. The matter was set for a jury trial on August 22, 2011.

About four and a half months before the trial date, on April 8, 2011, attorney Rickey Ivie (Ivie), of the firm Ivie, McNeill & Wyatt substituted in as counsel for the Manns.

On April 15, 2011, upon learning of the substitution, Wade's attorney, Joseph Scheimer (Schleimer) spoke with Ivie by telephone. Schleimer told Ivie that his client, Wade, objected to Ivie's representation of Mann and demanded that Ivie withdraw. Ivie refused.

1. *Moving papers.*

On April 20, 2011, Wade filed a motion to disqualify Ivie and the Ivie firm, pursuant to Code of Civil Procedure section 128 and Rules of Professional Conduct, rule 3-310 [avoiding representation of adverse interests]. The motion was supported by the declarations of Wade and Schleimer. The motion was made on the ground that in an August 2008 telephone conversation, Wade shared confidential information with Ivie about his claims against the Manns.

Wade's declaration stated in pertinent part:

"In or about August, 2008,1 contacted attorney Rickey Ivie and consulted him about representing me in a claim against Defendants David and Tamela Mann. Mr. Ivie and I spoke for approximately 15-20 minutes and I shared confidences with him about

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[1] An order granting a motion to disqualify counsel is an appealable order. (*Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 882.)

my claims against the Manns. Mr. Ivie asked questions, and I answered, and he gave me legal advice, including specifics about how he would pursue my claims against the Manns. At the end of the call, Mr. Ivie offered to file this lawsuit for me and quoted financial terms for a mixed contingency fee retainer. I was going to retain Mr. Ivie to file this lawsuit, but then I was informed that he was an attorney for Anschutz Entertainment Group ('Anschutz'), which had been involved in a business dispute (including litigation) with my church, the Faithful Central Bible Church ('FCBC'). Since I was a Deacon of FCBC, I refrained from engaging Mr. Ivie because of this conflict. I remember the foregoing distinctly because I researched Mr. Ivie, I was impressed with his credentials and articulation of what he would do for me, and I wanted to hire him but felt that I couldn't. I do not consent to Mr. Ivie representing the Manns."

Wade also submitted a corroborating declaration from Marc Little, general counsel for FCBC. The Little declaration stated in pertinent part: "In or about August, 2008, Mr. Wade informed me that he was retaining [Ivie] to file this lawsuit for him against [the Manns]. I informed Mr. Wade that attorney Rickey Ivie represented the Anschutz Entertainment Group ('AEG') in legal matters that were adverse to the FCB Church."

2. *Opposing papers.*

In resisting the motion to disqualify, Ivie denied the existence of an attorney/client relationship with Wade. Ivie further asserted that even assuming Wade and Ivie "had a phone consultation – which Ivie denie[d] – the communication was at most a peripheral one and does not give rise to an attorney/client relationship."

Ivie's opposing declaration stated in pertinent part:

"4. On or about April 15, [2011,] I learned for the first time that counsel for Plaintiff, Joseph D. Schleimer ('Attorney Schleimer'), would move to disqualify myself and [my firm] from the instant action if I did not immediately withdraw. Attorney Schleimer's proposed motion would be made on the grounds that Plaintiff shared confidential information about the claims against Defendants with me during an August 2008 telephone conversation. . . .

"5. On April 18, I responded by writing a letter to Attorney Schleimer wherein I declined to withdraw as counsel. . . .

"6. I did not have a telephone conversation with Plaintiff which lasted 15-20 minutes.

"7. I do not recall having a telephone conversation with Plaintiff in August 2008, regarding his alleged claims against the Mann's.

"8. Plaintiff never disclosed any confidential information to me regarding his alleged claims against the Mann's.

"9. I did not give any legal advice or legal principles to Plaintiff regarding his alleged claims against the Mann's. Furthermore, I did not perform legal work, research or conduct an analysis of the case.

"10. Plaintiff never retained me or [my firm] for services on the Mann case, or any other matter.

"11. Plaintiff's account of my alleged conversation with him is contrary to my thirty year practice regarding telephone conversations with prospective clients. In speaking with prospective clients on the telephone on, before, and after August 2008, it was and continues to be my practice to have brief discussions (less than ten minutes) in order to ascertain only the general nature of the case and whether it is the type of case which our office could provide representation. Any further discussion or response to a request for legal advice requires a formal in person consultation and payment of a fee.

"12. I did not quote to Plaintiff a retainer fee. Plaintiff's general description of a retainer fee arrangement fails to provide any terms or conditions which would have been necessary to include in a retainer agreement.

"13. I could not have provided legal advice to Plaintiff without having read the agreements, and based upon minimal information that could have been provided during the brief consultation."

3. *Trial court's ruling.*

On June 21, 2011, the matter came on for hearing. The trial court granted Wade's motion to disqualify Ivie, ruling in pertinent part:

"A party seeking disqualification of an attorney must generally show 1) there was an attorney-client relationship between the party and the attorney, and 2) there is an adverse and substantial relationship between the attorney's current representation and the attorney's former representation of the moving party. [Citations].

"Plaintiff's motion meets these requirements. The motion is supported by Plaintiff's declaration, in which he states that he spoke with Ivie in August 2008 and considered hiring him for representation in this case; he and Ivie spoke about the claims in this case, many questions were asked, answers were given, advice was provided, and specifics about how to pursue the claims at issue in this lawsuit were discussed; he ultimately did not hire Ivie because he learned that Ivie represented a company that had a business dispute with the church in which Plaintiff was a deacon. Plaintiff also submits a declaration by Marc Little, who states that he is an officer of Plaintiff's church and talked with Plaintiff about Ivie after their consultation in August 2008.

"In opposition, Defendant presents a declaration by Ivie, who states that [he] never had a conversation with Plaintiff that lasted 15-20 minutes; he does not recall having any conversation with Plaintiff in August 2008; he did not receive confidential information from Plaintiff; and he did not give legal advice to Plaintiff. In contrast to Plaintiff's declaration, Ivie's declaration is indefinite and relies on his usual practices rather than a clear recollection and description of what happened. Plaintiff's declaration is also supported in some details by the declaration of Marc Little. Plaintiff's showing is much more persuasive.

"Defendant also argues in opposition that Ivie did not have an attorney-client relationship with Plaintiff. But the Supreme Court has recognized that 'The fiduciary relationship existing between lawyer and client extends to preliminary consultations by a prospective client with a view to retention of the lawyer, although actual employment does not result.' *People v. SpeeDee Oil Change Systems* [(1999)] 20 Cal.4th 1135, 1147-1148. Plaintiff has shown that in his 15-20 minute consultation with Ivie, they had a substantive discussion about the very same issues that are now presented in this case.

"The Court recognizes that disqualification of counsel is a drastic measure. But Plaintiff raised Ivie's conflict of interest within days of learning of his substitution as defense counsel, Ivie has been involved in the case a little more than two months, and Defendants were represented for more than two years in this case by their former attorneys. Prejudice to Defendants is minimal, and it is greatly exceeded by the harm to Plaintiff from a direct and substantive conflict of interests."

The Manns filed a timely notice of appeal from the order disqualifying their counsel.

CONTENTIONS

Mann contends the disqualification order should be reversed for want of substantial evidence because it was based on Wade's wholly conclusory assertions that he divulged confidential information and received legal advice.

DISCUSSION

1. *Standard of appellate review.*

A trial court's ruling on a disqualification motion is reviewed under the deferential abuse of discretion standard. In exercising its discretion, the trial court must make a reasoned judgment that complies with applicable legal principles and policies. The order is subject to reversal only when there is no reasonable basis for the trial court's decision. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 46 (*Clark*).)

In deciding whether the trial court abused its discretion, we are bound by the substantial evidence rule. (*Clark, supra*, 196 Cal.App.4th at p. 46.) The trial court's order is presumed correct, all intendments and presumptions are indulged to support it, conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court's resolution of any factual disputes arising from the evidence is conclusive. (*Id*. at pp. 46-47.)

" 'In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. [Citation.] Where the trial court has drawn reasonable inferences from the evidence, we have no power to draw different

inferences, even though different inferences may also be reasonable.' [Citation.] 'If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court's express or implied findings supported by substantial evidence.' [Citations.]" (*Clark, supra,* 196 Cal.App.4th at p. 47.)

2. *Legal standards for disqualification.*

A trial court's "authority to disqualify an attorney derives from its inherent power to 'control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.' [Citations.] '*The power is frequently exercised on a showing that disqualification is required under professional standards governing . . . potential adverse use of confidential information.*' [Citation.]" (*Clark, supra,* 196 Cal.App.4th at p. 47, italics added.)

A disqualification motion "involves a conflict between a client's right to counsel of his or her choice, on the one hand, and the need to maintain ethical standards of professional responsibility, on the other. [Citation.] Although disqualification necessarily impinges on a litigant's right to counsel of his or her choice, the decision on a disqualification motion 'involves more than just the interests of the parties.' [Citation.] When ruling on a disqualification motion, '[t]he paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar. The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process.' [Citations.]" (*Clark, supra,* 196 Cal.App.4th at pp. 47-48.)

3. *No abuse of discretion in trial court's grant of Wade's motion to disqualify Ivie and the Ivie firm from representing the Manns in this litigation.*

As set forth in detail above, the Wade declaration showed that in August 2008, Wade had a telephone conversation with Ivie which lasted 15 to 20 minutes, and during that conversation Wade shared confidences with Ivie about his claims against the Manns.

The trial court weighed the evidence and specifically found that Wade's declaration was more specific and more persuasive than Ivie's declaration. It is not the role of this court to reweigh the evidence. Our review is confined to determining whether the trial court's ruling is supported by substantial evidence. Because the Wade declaration, corroborated in certain respects by the Little declaration, provides substantial support for the trial court's determination, we perceive no abuse of discretion in the trial court's grant of Wade's motion to disqualify Ivie and the Ivie firm.

DISPOSITION

The order is affirmed. Wade shall recover his costs on appeal.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.